

(b) In a charter, the entities in the association shall describe the goals of the association, the responsibilities of the entities, and the activities that the entities will engage in to accomplish their goals. The term of a charter may not be less than 3 years or more than 10 years, with the opportunity for renewal for additional terms of the same length upon the agreement of the entities and the department.

(c) The department may not issue a charter unless the department determines that the entities in the association have the resources to carry out the charter. Before issuing a proposed charter, the department shall provide public notice of the proposed charter in the areas in which the activities under the charter will be engaged in. After providing public notice and before issuing a proposed charter, the department shall hold a public informational hearing on the proposed charter. A decision by the department to issue a charter is not subject to review under ch. 227.

(d) An association to which a charter has been issued shall report annually to the department on the activities that have been engaged in under the charter.

(e) The department may, after an opportunity for a hearing, terminate a charter if the department determines that the entities in the chartered association are in substantial noncompliance with the charter. Any person who has evidence that the entities in a chartered association are not in compliance with a charter may ask the department to terminate the charter.

(7m) ENVIRONMENTAL AUDITORS. The department may not approve an outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside environmental auditor is certified by the Registrar Accreditation Board or meets criteria concerning education, training, experience, and performance that are equal to the criteria in International Organization for Standardization guidance 19011.

(7s) ACCESS TO RECORDS. (a) Except as provided in par. (c), the department shall make any record, report, or other information obtained in the administration of this section available to the public.

(c) The department shall keep confidential any part of a record, report, or other information obtained in the administration of this section, other than emission data or discharge data, upon receiving an application for confidential status by any person containing a showing satisfactory to the department that the part of a record, report, or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(d) If the department refuses to release information on the grounds that it is confidential under par. (c) and a person challenges that refusal, the department shall inform the affected participant of that challenge. Unless the participant authorizes the department to release the information, the participant shall pay the reasonable costs incurred by this state to defend the refusal to release the information.

(e) Paragraph (c) does not prevent the disclosure of any information to a representative of the department for the purpose of administering this section or to an officer, employee, or authorized representative of the federal government for the purpose of administering federal law. When the department provides information that is confidential under par. (c) to the federal government, the department shall also provide a copy of the application for confidential status.

(8) POWERS AND DUTIES OF THE DEPARTMENT. (a) To facilitate the process under sub. (6), the department shall develop model terms that may be used in participation contracts.

(b) After consultations with interested persons, the department shall annually establish a list identifying aspects of superior environmental performance that the department will use to identify which letters of intent it will process under sub. (6) in the following year and the order in which it will process the letters of intent.

(c) The department may promulgate rules for the administration of the program. In the rules, the department may specify

incentives, that are consistent with federal laws and other state laws, that the department may provide to participants in tier II of the program.

(d) The department shall encourage small businesses, agricultural organizations, entities that are not subject to environmental requirements, local governments, and other entities to form groups to work cooperatively on projects to achieve superior environmental performance.

(e) The department shall select a logo for the program.

(f) The department and the department of commerce shall jointly provide information about participation contracts and environmental management systems to potential participants in the program and to other interested persons. The department shall consult with the department of commerce about the administration of the program.

(g) The department shall collect, process, evaluate, and disseminate data and information about environmentally beneficial and innovative practices submitted by participants in the program. The department may conduct or direct studies, experiments, or research related to the program in cooperation with participants and other interested persons. The department may enter into agreements with the Robert M. La Follette institute of public affairs at the University of Wisconsin–Madison to assist in the promotion, administration, or evaluation of the program.

(h) The department shall submit a progress report on the program to the legislature, in the manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after it submits the first report.

(i) The department shall implement a process to obtain advice from a balanced public group about all of the following:

1. The implementation and operation of the program, including the setting of goals and priorities for the program.

2. Evaluating the costs of applying for the program and of entering into a participation contract or a charter and the administrative costs of participating in the program.

3. Assessing whether incentives provided under a participation contract are proportional to the environmental benefits committed to under a participation contract.

4. Procedures for evaluating the program and the results of the program.

5. Changes that should be made in the program.

(10) PENALTY. Any person who intentionally makes a false statement in material submitted under this section shall be fined not less than \$10 nor more than \$10,000 or imprisoned for not more than 6 months or both.

(11) SUNSET. The department may not process or approve any application for participation in the program that it receives after July 1, 2009.

History: 2003 a. 276, 326, 327.
Achieving Environmental Excellence: Green Tier Legislation. Bochart & Schlaefter. Wis. Law. Sept. 2005.

299.85 Environmental Improvement Program.

(1) DEFINITIONS. In this section:

(a) “Environmental compliance audit” means a systematic, documented, and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental performance of the facility, including an evaluation of compliance with one or more environmental requirements.

(am) “Environmental performance” means the effects of a facility on air, water, land, natural resources, and human health.

(c) “Environmental requirement” means a requirement in any of the following:

1. Chapters 29 to 31, 160, or 280 to 299, a rule promulgated under one of those chapters, or a permit, license, other approval, or order issued by the department under one of those chapters.

2. An ordinance or other legally binding requirement of a local governmental unit enacted under authority granted by a state law relating to environmental protection.

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(d) “Facility” means all buildings, equipment, and structures located on a single parcel or on adjacent parcels that are owned or operated by the same person.

(e) “Local governmental unit” means a city, village, town, county, town sanitary district, or metropolitan sewerage district.

(f) “Regulated entity” means a public or private entity that is subject to environmental requirements.

(g) “Violation” means a violation of an environmental requirement.

(2) REQUIREMENTS FOR PARTICIPATION. A regulated entity qualifies for participation in the Environmental Improvement Program with respect to a facility owned or operated by the regulated entity if all of the following apply:

(a) The regulated entity conducts an environmental compliance audit of the facility.

(b) The regulated entity notifies the department in writing, no fewer than 30 days before beginning the environmental compliance audit, of the date on which the environmental compliance audit will begin, the site or facility or the operations or practices at a site or facility to be reviewed, and the general scope of the environmental compliance audit.

(bm) The notice under par. (b) includes a statement, signed by an official of the regulated entity who is responsible for environmental compliance, that acknowledges that sub. (7) (a) does not apply to violations discovered by the regulated entity before the beginning of the environmental compliance audit.

(c) The environmental compliance audit complies with sub. (4).

(e) The regulated entity submits a report as required under sub. (3).

(f) At the time of submitting a report under sub. (3), the department of justice has not, within 2 years, filed a suit to enforce an environmental requirement, and the department or a local governmental unit has not, within 2 years, issued a citation to enforce an environmental requirement, because of a violation involving the facility.

(3) AUDIT REPORT. To participate in the Environmental Improvement Program with respect to a facility, the regulated entity that owns or operates the facility shall submit a report to the department within 45 days after the date of the final written report of findings of the environmental compliance audit of the facility. The regulated entity shall complete the environmental compliance audit, including the final written report of findings, within 365 days after providing the notice under sub. (2) (b). The report submitted to the department shall include all of the following:

(a) A description of the environmental compliance audit, including who conducted the environmental compliance audit, when it was completed, what activities and operations were examined, what was revealed by the environmental compliance audit, and any other information needed by the department to make the report under sub. (9m).

(b) A description of all violations revealed by the environmental compliance audit and of the length of time that the violations may have continued.

(c) A description of actions taken or proposed to be taken to correct the violations.

(d) A commitment to correct the violations within 90 days of submitting the report or according to a compliance schedule approved by the department.

(e) If the regulated entity proposes to take more than 90 days to correct the violations, a proposed compliance schedule that contains the shortest reasonable periods for correcting the violations, a statement that justifies the proposed compliance schedule, and a description of measures that the regulated entity will take to minimize the effects of the violations during the period of the compliance schedule.

(em) If the regulated entity proposes to take more than 90 days to correct the violations, the proposed stipulated penalties to be

imposed if the regulated entity fails to comply with the compliance schedule under par. (e).

(f) A description of the measures that the regulated entity has taken or will take to prevent future violations and a timetable for taking the measures that it has not yet taken.

(3m) PUBLIC NOTICE; COMMENT PERIOD. (a) The department shall provide at least 30 days for public comment on a compliance schedule and stipulated penalties proposed in a report under sub. (3). The department may not approve or issue a compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m) until after the end of the comment period.

(b) Before the start of the public comment period under par. (a), the department shall provide public notice of the proposed compliance schedule and stipulated penalties that does all of the following:

1. Identifies the regulated entity that submitted the report under sub. (3) and the facility at which the violation occurred, describes the environmental requirement that was violated, and indicates whether the violation related to reporting or another administrative requirement and whether the violation related to air, water, solid waste, hazardous waste, or another, specified, aspect of environmental regulation.

2. Describes the proposed compliance schedule and the proposed stipulated penalties.

3. Identifies an employee of the department and an employee of the regulated entity who may be contacted for additional information about the proposed compliance schedule and the proposed stipulated penalties.

4. States that comments concerning the proposed compliance schedule and the proposed stipulated penalties may be submitted to the department during the comment period and states the last date of the comment period.

(4) ENVIRONMENTAL COMPLIANCE AUDIT. A regulated entity does not qualify for participation in the Environmental Improvement Program unless the final written report of findings of the environmental compliance audit is labeled “environmental compliance audit report,” is dated, and, if the environmental compliance audit identifies violations, includes a plan for corrective action. A regulated entity may use a form developed by the regulated entity, by a consultant, or by the department for the final written report of findings of the environmental compliance audit.

(6) COMPLIANCE SCHEDULES. (a) If the department receives a report under sub. (3) that contains a proposed compliance schedule under sub. (3) (e), the department shall review the proposed compliance schedule. The department may approve the compliance schedule as submitted or propose a different compliance schedule. If the regulated entity does not agree to implement a compliance schedule proposed by the department, the department shall schedule a meeting with the regulated entity to attempt to reach an agreement on a compliance schedule. If the department and the regulated entity do not reach an agreement on a compliance schedule, the department may issue a compliance schedule. A compliance schedule under this subsection is subject to review under ch. 227.

(b) The department may not approve or issue a compliance schedule that extends longer than 12 months beyond the date of approval of the compliance schedule. The department shall consider the following factors in determining whether to approve a compliance schedule:

1. The environmental and public health consequences of the violations.

2. The time needed to implement a change in raw materials or method of production if that change is an available alternative to other methods of correcting the violations.

3. The time needed to purchase any equipment or supplies that are needed to correct the violations.

(6m) STIPULATED PENALTIES. (a) If the department receives a report under sub. (3) that contains proposed stipulated penalties under sub. (3) (em), the department shall review the proposed stip-

ulated penalties. The department may approve the stipulated penalties as submitted or propose different stipulated penalties. If the regulated entity does not agree to stipulated penalties proposed by the department, the department shall schedule a meeting with the regulated entity to attempt to reach an agreement on stipulated penalties. If no agreement is reached, there are no stipulated penalties for failure to comply with the compliance schedule.

(b) Stipulated penalties approved under par. (a) shall specify a period, not longer than 6 months beyond the end of the compliance schedule, during which the stipulated penalties will apply.

(7) DEFERRED CIVIL ENFORCEMENT. (a) 1. For at least 90 days after the department receives a report that meets the requirements in sub. (3), this state may not begin a civil action to collect forfeitures for violations that are disclosed in the report by a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Program.

2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Program corrects violations that it discloses in a report that meets the requirements of sub. (3) within 90 days after the department receives the report that meets the requirements of sub. (3), the regulated entity may not be required to forfeit more than \$500 for each violation, regardless of the number of days during which the violation continues.

3. This state may not begin a civil action to collect forfeitures for violations covered by a compliance schedule that is approved under sub. (6) during the period of the compliance schedule if the regulated entity is in compliance with the compliance schedule. If the regulated entity fails to comply with the compliance schedule, the department may collect any stipulated penalties during the period in which the stipulated penalties apply. This state may begin a civil action to collect forfeitures for violations that are not corrected by the end of the period in which the stipulated penalties apply. If the regulated entity fails to comply with the compliance schedule and there are no stipulated penalties, this state may begin a civil action to collect forfeitures for the violations.

4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule under sub. (6) and the regulated entity corrects the violations according to the compliance schedule, the regulated entity may not be required to forfeit more than \$500 for each violation, regardless of the number of days during which the violation continues.

(am) The department may issue a citation and follow the procedures under ss. 23.50 to 23.99 to collect a forfeiture for a violation to which par. (a) 2. or 4. applies.

(b) Notwithstanding par. (a), this state may at any time begin a civil action to collect a forfeiture not limited in amount under par. (a) 2. or 4. for a violation if any of the following apply:

1. The violation presents an imminent threat to public health or the environment or may cause serious harm to public health or the environment.

2. The department discovers the violation before submission of a report under sub. (3).

3. The violation results in a substantial economic benefit that gives the regulated entity a clear advantage over its business competitors.

4. The violation is identified through monitoring or sampling required by permit, statute, rule, regulation, judicial or administrative order, or consent agreement.

5. The violation is a violation of the same environmental requirement at the same facility and committed in the same manner as a violation previously reported by the regulated entity under sub. (3), unless the violation is caused by a change in business processes or activities.

6. The violation is discovered by the regulated entity before the beginning of the compliance audit.

(8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY. If the department receives a report that complies with sub. (3) from a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Program, and the report discloses a potential criminal violation, the department and the department of justice shall take into account the diligent actions of, and reasonable care taken by, the regulated entity to comply with environmental requirements in deciding whether to pursue a criminal enforcement action and what penalty should be sought. In determining whether a regulated entity acted with due diligence and reasonable care, the department and the department of justice shall consider whether the regulated entity has demonstrated any of the following:

(a) That the regulated entity took corrective action that was timely when the violation was discovered.

(b) That the regulated entity exercised reasonable care in attempting to prevent the violation and to ensure compliance with environmental requirements.

(c) That the regulated entity had a documented history of good faith efforts to comply with environmental requirements before beginning to conduct environmental compliance audits.

(d) That the regulated entity has promptly made appropriate efforts to achieve compliance with environmental requirements since beginning to conduct environmental compliance audits and those efforts were taken with due diligence.

(e) That the regulated entity exercised reasonable care in identifying violations in a timely manner.

(f) That the regulated entity willingly cooperated in any investigation that was conducted by this state or a local governmental unit to determine the extent and cause of the violation.

(9) ACCESS TO RECORDS. (a) Except as provided in par. (c), the department shall make any record, report, or other information obtained in the administration of this section available to the public.

(c) The department shall keep confidential any part of a record, report, or other information obtained in the administration of this section, other than emission data or discharge data, upon receiving an application for confidential status by any person containing a showing satisfactory to the department that the part of a record, report, or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(d) If the department refuses to release information on the grounds that it is confidential under par. (c) and a person challenges that refusal, the department shall inform the affected regulated entity of that challenge. Unless the regulated entity authorizes the department to release the information, the regulated entity shall pay the reasonable costs incurred by this state to defend the refusal to release the information.

(e) Paragraph (c) does not prevent the disclosure of any information to a representative of the department for the purpose of administering this section or to an officer, employee, or authorized representative of the federal government for the purpose of

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administering federal law. When the department provides information that is confidential under par. (c) to the federal government, the department shall also provide a copy of the application for confidential status.

(9m) ANNUAL REPORT. The department shall submit an annual report under s. 13.172 (3) concerning the Environmental Improvement Program to the standing committees of the legislature with jurisdiction over environmental matters. The department shall submit the first annual report no later than May 1, 2006. The department shall include all of the following in the annual report:

(a) The number of reports received under sub. (3), including the number of reports by county of the facility involved and by whether the regulated entity is governmental or nongovernmental.

(b) The number of violations reported by type, including the number of violations related to air, water, solid waste, hazardous waste, and to other specified aspects of environmental regulation and the number of violations involving each of the following:

1. Failure to have a required permit or other approval.
2. Failure to have a required plan.
3. Violation of a condition of a permit or other approval.
4. Release of a substance to the environment.
5. Failure to report.

(c) The average time to correct the reported violations and the number of violations not yet corrected, by category under par. (b).

(d) The number of regulated entities requiring longer than 90 days to take corrective action and a description of the stipulated penalties associated with the compliance schedules for those corrective actions.

(e) Any recommendations for changes in the program based on discussions with interested persons, including legislators and members of the public.

(10) PENALTY. Any person who intentionally makes a false statement under this section shall be fined not less than \$10 nor more than \$10,000 or imprisoned for not more than 6 months or both.

(11) SUNSET. Subsections (7) and (8) do not apply to a regulated entity that submits a report under sub. (3) after July 1, 2009.

History: 2003 a. 276, 326.

299.91 Hearings; procedure; review. The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed \$100 within 20 days after the service upon them of a copy of the order and all proceedings on the part of the complainants shall be stayed until the security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post-office address at least 20 days prior to the time set for the hearing. The hearing shall be held not later than 90 days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the department and serve a copy on the person designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this section the hearing examiner may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover the expenses of the hearing in a civil action. Any situation, project or activity

which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution. This section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or s. 291.23 or 291.25.

History: 1979 c. 176; 1979 c. 221 s. 633; Stats. 1979 s. 144.975; 1981 c. 374, 403; 1995 a. 227 s. 826; Stats. 1995 s. 299.91